

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

SHAUNA E. SMITH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-06-492-M
	)	
DAVID ROCKETT,	)	
LINDSEY WILLIS-ANDREWS,	)	
CLARK & ROCKETT, P.C.,	)	
ROCK PILE, L.L.C.,	)	
ALLIED PHYSICIANS GROUP, INC.,	)	
BRENT D. SIEMENS,	)	
BRENT D. SIEMENS, INC.,	)	
JERRY J. DUNLAP, II,	)	
	)	
Defendants.	)	


**ORDER**

On August 11, 2006, the Court dismissed this case based upon plaintiff's lack of standing. Plaintiff appealed this Court's order of dismissal, and on April 11, 2008, the United States Court of Appeals for the Tenth Circuit issued its decision reversing and remanding the matter back to this Court. On May 1, 2008, all of the defendants in this case filed second motions to dismiss. On May 5, 2008, the Tenth Circuit issued its mandate in the case.

Until a mandate issues, "the case ordinarily remains within the jurisdiction of the court of appeals and the district court lacks power to proceed further with respect to the matters involved with the appeal." 16AA Charles Alan Wright, Arthur R. Miller, Edward H. Cooper, Catherine T. Struve, Federal Practice and Procedure § 3987 (4<sup>th</sup> ed. 2008). Because the motions to dismiss were filed before the Tenth Circuit issued its mandate, the Court finds that it does not have jurisdiction to rule on these motions. Accordingly, the Court STRIKES defendants David Rockett, Lindsey Willis-Andrews, Clark & Rockett, P.C., and Rock Pile, L.L.C.'s Second Motion to Dismiss

Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) [docket no. 76], defendant Jerry J. Dunlap, II's Second Motion to Dismiss [docket no. 77], and defendants Allied Physicians Group, Inc., Brent D. Siemens, and Brent D. Siemens, Inc.'s Motion to Dismiss [docket no. 78] for lack of jurisdiction.

**IT IS SO ORDERED this 24th day of February, 2009.**



VICKI MILES-LAGRANGE  
CHIEF UNITED STATES DISTRICT JUDGE